

NOVEMBER 2, 2001

REQUEST FOR BID

STATIONARY FUEL CELLS

1.0 INTRODUCTION

1.1 OVERVIEW

California's recent energy experience has confirmed that the state lacks sufficient reserve power generating capacity, and much of the existing capacity is over 30 years old. California State Government, through the newly formed California Power Authority (the Authority), is pursuing expeditious means of increasing capacity, and increasing the role of renewable resources and cleaner, more efficient generation technologies. Siting clean, efficient distributed power systems is an important element of this effort.

State government is taking the lead in introducing stationary fuel cells as a preferred technology for distributed power, in part through the efforts of the California Stationary Fuel Cell Collaborative to foster fuel cell use in government buildings. Fuel cell capacity offered through the Authority will facilitate these efforts.

This request for bid (RFB) solicits responses that will be used to create a list of eligible fuel cell vendors based on their companies' qualifications, successful field installations, and installed product prices projected over specified time periods. An expert panel will review all bids submitted under this RFB to assist in identifying eligible, qualified vendors will then be able to respond to request for proposals (RFP's) issued by the Authority for contracted projects in various State buildings and other public entities at the prices stated in these RFB's. Only successful, qualified bidders will be eligible for future potential long-term purchase contracts for the State.

Because fuel cell prices are expected to decline in the future as volume increases, this RFB asks for separate prices for installations in successive time periods. Its intent is to establish eligibility lists and prices for each year during this period in response to at least a 4-year commitment by the Authority. Respondents must indicate the capacity they could provide and the installed prices by year in Exhibit A with the commitment that responses to future RFP's for contract purposes must reflect prices at or below the prices indicated in respondents RFB submittal. Only companies meeting the criteria stated herein can be placed on an eligibility list for future state fuel cell purchase contracts. The State reserves the right to reopen the eligibility list periodically and to place additional companies on the list.

1.2 OBJECTIVE

The Authority intends to issue RFP's for the development of a number of fuel cell projects from 2002 through 2005. Its goal is to purchase and install as much clean, cost-effective and reliable fuel cell capacity as possible in State, municipal, and other public facilities during these years. The Authority hopes to entertain orders of as much as 20 MW of fuel cell capacity by the fall of 2002, 50 MW 2003, and 300 MW 2004/2005, if emerging fuel cell companies are able to meet our technical, cost and business criteria, and demonstrate the capacity to produce and deliver fuel cells on this scale. The State would be willing to purchase substantially more capacity each year if the bid prices are deemed to be sufficiently competitive. Each successful contractor will be given preference for manufacturing in California and making available for sale in California an equivalent amount of fuel cells each year of their awarded contract at a price not to exceed that paid by the State (in accordance with 2.6).

1.3 FUEL CELL DEFINITION & SOLICITATION PROCESS

The Authority will consider for eligibility respondents offering any fuel cell technology meeting the requirements stated in this RFB, although each technology shall be evaluated for appropriateness under specific RFP's subsequently issued by the Authority or other public entities.

As used in this RFB, the term 'fuel cell' means integrated power plant systems containing a stack, tubular array, or other functionally similar configuration used to chemically convert fuel to electrical energy; an inverter and fuel processing section where necessary; and other balance of plant equipment (including heat recovery equipment) needed to support the plant's operation and/or its energy conversion. The term includes hybrid systems that produce additional power by utilizing waste heat from the conversion process, and/or thermal or mechanical energy from other system components, or regenerative systems that produce hydrogen for later use.

The Authority intends to act as the purchasing agent for State and other agencies to place fuel cells in those agencies' buildings or other appropriate sites. The Authority expects that the installed fuel cell will be priced at a level that will allow the agencies to recover their cost over their useful life at the price the State would otherwise pay for electricity. Through this RFB, the Authority will identify an eligible list of vendors and manufacturers through review by an expert panel. This list will be available to any public entity to issue subsequent RFP's. The Authority intends to identify qualified vendors who can respond to turnkey fuel cell installation project or group of project RFP's issued by the Authority.

Each respondent must demonstrate that it satisfies the minimum qualifications set forth in Section 2 below. Its response must conform to the outline in Section 3, and must adequately address all points set forth in that Section.

Responses are invited for turnkey installations to be completed in each of the following periods:

- by October 1, 2002
- from October 1, 2002, through September 30, 2003
- from October 1, 2003, through September 30, 2004
- from October 1, 2004, through September 30, 2005

If a respondent is placed on the eligibility list, its bid price in response to subsequent RFP's for installations in the first year (ending October 1, 2002) shall not exceed the indicative price in this submittal. If the respondent fails to comply with this requirement, the Authority may choose to remove it from the eligibility list. Respondents may offer pricing (see Section 2.2) for any one or more of these periods.

Responses to this RFB must be submitted in writing, signed by an authorized officer or agent of the respondent. All responses should have "Stationary Fuel Cell RFB Response" marked clearly and prominently on the envelope. The Authority must receive ten copies of the response no later than 5 p.m. on December 21, 2001. Responses submitted after this time and date cannot be accepted, and proposals that are incomplete or do not conform to the requirements of this RFB will not be considered.

Responses shall be submitted to:

California Consumer Power and Conservation Financing Authority
Attn: Stationary Fuel Cell RFB Response
901 P Street, Suite 142A
Sacramento, CA 95814

All questions related to this RFB shall be directed to:

Tracy Saville
(916) 651-9799
(916) 651-9595 (fax)
Tracy.Saville@dgs.ca.gov

A pre-submittal conference will be held at TBA for the purpose of addressing vendor questions concerning this RFB and the submittals requested under it. Attendance is encouraged but not required. Those who wish to attend, in person or by conference call hookup, must notify the Authority not later than the close of business on TBA by phone at (916) 651-9799 or by email addressed to tracy.saville@dgs.ca.gov.

Tentative Key Action dates are as follows:

RFB Publication	November 9, 2001
Bidders Conference	November 24, 2001
Written Q & A Submissions by	TBA
Closing Bids Due	December 21, 2001
Expert Panel Review	By January 1, 2002
Eligible Bidders List Released	By January 1, 2002
RFP(s) Issued	*February 1, 2002

*Or earlier.

2.0 MINIMUM QUALIFICATIONS AND REQUIREMENTS

2.1 QUALIFICATIONS, EXPERIENCE AND REFERENCES

Each respondent must identify the entities it expects to comprise its team for any fuel cell installations, the key personnel it expects to be involved, and the officer or employee that has authority to negotiate for and enter binding agreements on behalf of the respondent, as indicated in Section 3.3.1 of this RFB.

To qualify as an eligible vendor, bidders must by the date it submits its response to this RFB, have placed in field applications a minimum of either 6 fuel cell installations of 1kW or larger, or have accumulated at least 6000 hours of operation of each technology type (phosphoric acid, molten carbonate, solid oxide, PEM, etc.) for which it seeks eligibility to propose on future RFP's issued by the Authority or other public entities. Discretionary consideration may be given to other bidders if it is deemed by the Authority that there is compelling evidence of commercial viability submitted by the vendor. The Authority reserves the right, at its sole discretion, to determine qualifications, to request additional information, and to test any equipment in order to ensure it meets commercial operating criteria.

Installation capacity must be either commercial or demonstration in which the power produced has been put to practical use by the host site, and should include at least one turnkey installation completed by the respondent or by an energy service provider or installation contractor with which it has an established and ongoing business relationship. Respondents must provide information describing their experience as indicated in Section 3.3.2 of this RFB.

Each successful contractor will be given preference for manufacturing in California and making available for sale in California an equivalent amount of fuel cells each year of their awarded contract at a price not to exceed that paid by the State (in accordance with 2.6).

Respondents must provide references for owners or users of installed fuel cell projects as indicated in Section 3.3.3 below. These references may be checked to determine that respondent's performance substantially met project goals and contract requirements.

2.2 MANUFACTURING CAPACITY , INDICATIVE PRICING AND TURNKEY GUIDELINES

Manufacturing Capacity. Each respondent must indicate whether it will offer to install fuel cell manufacturing capacity in one or more of the periods identified in Section 1.3 above, and if so, in what amounts for each period. It must do so by completing the attached Exhibit A detailing its production and installation capacity and the components of its price, as well the warranty and O&M information identified there.

Indicative Pricing. All responses must:

- assume turnkey installations;
- include on-site training for routine operations and maintenance;
- include minimum five-year warranties¹ on commercially reasonable terms, standard or better (or equivalent) for the industry and equal to or exceeding the standards in Section 2.4 below; and
- include all of these costs in the indicative prices furnished on Exhibit A.

Turnkey Guidelines

Guidelines for turnkey installations may include the following. The vendor, its engineering or installation contractor will be responsible to integrate the fuel cell with electrical, natural gas, water and other utility systems serving each installation site. Prices requested in Exhibit A must include a reasonable range of design and implementation costs, identified by category, for such integration on typical installations (recognizing that site-specific factors will impact actual costs on projects requested through later RFP's).

For the purposes of producing indicative prices for a response to this RFB, use the following assumptions:

- There is an existing concrete pad at the site.
- There are no walls in the way, and access to the site is easy.
- Gas, electricity, water, and sewer connections are nearby and require no core boring.
- Meters will be required for all relevant material and energy flows into or out of the host site.

Fuel cell systems capable of combined heat and power (CHP) applications are strongly preferred, but not required for eligibility. The Authority may invite and may require CHP in project-specific RFP's, and will place significant value on CHP applications that enhance efficiency and minimize emissions. Indicative pricing requested in Exhibit A should include the costs of any heat recovery equipment provided as a standard part of the vendor's fuel cell package. It should separately identify the costs of any optional heat recovery equipment that the vendor normally provides for specific applications that require it, but it should not include site-specific costs associated with thermal usage.

¹ In lieu of a five-year warranty, a respondent may substitute a service agreement with a guaranteed maximum annual price, and a five-year term, an insurance policy, or a bond. Any such alternative instrument shall have the same effect on the buyer of mitigating performance risk for five years, and shall be included in the indicative price.

Respondents must also demonstrate bonding capacity or other financial strength sufficient to support the offerings described in Exhibit A; required information is detailed in Section 3.3.5 below.

2.3 TECHNICAL AND INSTALLATION REQUIREMENTS

All fuel cells offered are expected to meet the minimum specifications described in Exhibit B. Respondents must indicate in Section 3.3.6 of their submittals either that (i) they will comply with all the provisions listed in Exhibit B or (ii) they cannot comply with certain of the provisions, identifying specific provisions with which they cannot comply. Subsequent RFP's issued by the Authority may require compliance with additional site-specific conditions.

2.4 WARRANTIES AND SERVICE CONTRACT

As detailed further below, respondents seeking eligibility are expected to offer, directly or through an affiliate, contractor, energy service provider or other business arrangement:

- Five-year performance, breakdown and degradation warranties on commercially reasonable terms, or *equivalent risk management mechanism*, for complete turnkey system including but not limited to reformers, stacks, compressors, HRSGs, inverters, and switchgear.
- Following the five-year warranty period, an annual service contract on commercially reasonable terms guaranteeing 95% availability.
- Comprehensive onsite training in fuel cell operation, safety, and maintenance.

Respondents are expected to offer a minimum five-year performance warranty *or its equivalent* for each installation. The warranty should guarantee that the system as-built will produce within 5% of rated kW AC at the output of the inverter (to be demonstrated initially by a successful acceptance test within 60 days following completion of the installation). If system output is expected to degrade over time, the warranty should also include and warrant a degradation schedule. If a service contract is required during the warranty term as a condition of the warranty, respondents should so state.

Beyond these minimums, respondents may propose and provide cost information for any commercially available extended warranties for their systems.

At each installation site for future contracts awarded through subsequent RFP's, respondents will be expected to provide training in the operation, maintenance, and safety of their systems and, following the five-year warranty periods described above, to provide an annual service contract on commercially reasonable terms.

If any of the preceding warranty and service requirements are not acceptable to them, respondents must indicate which ones, and explain the scope of any exceptions or exclusions they propose to make, as specified in Section 3.3.7 below.

2.5 PROJECT MILESTONES

Respondents must submit a milestone schedule for development and installation of a simple fuel cell module of size and technology proposed, as illustrated in Section 3.3.8 below. This information will be used to assist the State in its planning and budget process, and will not be grounds for disqualification under this RFB unless the Authority believes the schedule is unacceptable or unresponsive to its goals.

2.6 CALIFORNIA PRESENCE: EZA, LAMBRA, TACPA, and SBPCA

If applicable, identify EZA, LAMBRA, TACPA, and Small Business Procurement and Contract Act information per section 2.6. For future RFP's, these preferences shall apply. For more information contact the Office of Small Business Certification and Resources at osbcrhelp@dgs.ca.gov.

EZA

The Enterprise Zone Act (EZA) allows state contracting officials to give California based companies a bid preference when 50% of the labor required to perform commodities contracts or 90% of the labor for services contracts is performed at the approved EZA work site(s). To receive a contract award based on preferences, the company must certify under penalty of perjury that the required contract labor shall be accomplished at the approved work site.

Companies qualifying for the 5 percent work site preference may request an additional 1 to 4 percent workforce preference by certifying to hire a specified percent of their contract workforce labor hours from a targeted employment area, or from enterprise zone eligible employees. See Exhibit C for further details.

LAMBRA

The Local Agency Military Base Recovery Area (LAMBRA) Act provides for two bidding preferences: Worksite and Workforce

Worksite Preference: LAMBRA provides a 5 percent bidding preference on state solicitations for goods and services valued at more than \$100,000 if the worksite is located in a LAMBRA as designated by the State Trade and Commerce Agency.

LAMBRA allows state-contracting officials to award the bid worksite preference when 50% of the labor hours required to perform a contract for goods, or 100% of the labor hours required to perform a contract for services is performed at the approved worksites.

Workforce Preference: Companies qualifying for the 5% worksite preference may request an additional 1% - 4% workforce preference by certifying to hire a specified percent of the contract workforce employees from those designated as LAMBRA qualified individuals (See Assembly Bill 3: Chapter 1012, 9/30/1998).

To request workforce preference, the bidder must first identify an eligible worksite.

The Office of Small Business Certification and Resources (OSBCR) in the Department of General Services administers the LAMBRA program, and they can be contacted at:

Office of Small Business Certification and Resources
1531 I Street, 2nd Floor
Sacramento, CA 95814-2016

Receptionist: (916) 323-5478
Fax: (916) 442-7855
24-Hour Recording & Mail Request call (916) 322-5060.
E-mail: osbcrhelp@dgs.ca.gov

See Exhibit E for further details.

TACPA

The Office of Small Business Certification and Resources (OSBCR) is also the administering agency for the Target Area Contract Preference Act (TACPA) program, which was implemented, in State procurement in 1982. TACPA provides a 5 percent bid preference on service and commodity contracts valued at more than \$100,000 if the business work site is located in a distressed area as designated by the Office of Planning and Research.

The TACPA allows state contracting officials to award California based companies the bid preference when 50% of the labor required to perform commodities contracts or 90% of the labor for services contracts is performed at the approved work site(s). TACPA work sites may be in, or directly adjacent to and forming a contiguous boundary with, the distressed area. To receive a contract award based on preferences, the company must certify under penalty of perjury that the required contract labor shall be accomplished at the approved work site.

Companies qualifying for the 5 percent work site preference may request an additional 1 to 4 percent workforce preference by certifying to hire a specified percent of their contract workforce labor hours from among persons with high risk of unemployment.

See Exhibit F for further details.

3.0 SUBMITTAL REQUIREMENTS

Section 2 above generally described minimum qualifications and requirements for this RFB. This Section 3 identifies specific topics and issues that each respondent must address, and outlines the organization that each respondent must follow in its written response to enable the Authority to compare and fairly evaluate the responses. The number of pages indicated for each topic is advisory only, but brevity is appreciated and advised.

3.1 TRANSMITTAL LETTER (2 pages)

Each respondent shall include a transmittal letter signed by a party authorized to sign binding agreements for projects of the nature ultimately contemplated by this RFB. The letter shall clearly indicate that the respondent has carefully read all the provisions in this RFB and that by submitting a response, agrees to be bound by them.

3.2 EXECUTIVE SUMMARY (2 pages)

Submittals shall include an Executive Summary.

3.3 QUALIFICATIONS, EXPERIENCE AND CAPACITY TO PERFORM

3.3.1 QUALIFICATIONS OF TEAM (2 pages plus resumes)

Each respondent shall provide the following information regarding the company and its team:

- Names of team member(s), major subcontractor(s) and supplier(s)
- Roles and relationships of the team members
- Name of the team member that will be the lead negotiator and will sign the contract with the State for the development of any projects awarded pursuant to subsequent RFP's

- Resumes for key employees likely to work on projects solicited pursuant to subsequent RFP's

3.3.2 TRACK RECORD AND EXPERIENCE (3 pages)

For the lead developer (and for the installation and/or construction firm, if different) indicate:

- Total kW of fuel cells placed in commercial operation or practical demonstration
- Total number of fuel cell installations to date, showing both turnkey installations and installations in which fuel cells were merely provided to the contractor
- All turnkey projects placed in commercial operation or practical demonstration
- Whether the company and/or its officers or principals are party to any lawsuit involving the performance of any equipment it has installed; if so, please include a summary of the issues and status.

3.3.3 REFERENCES (2 pages)

- References including name, title and contact information of the individual to contact, the company name, project capacity and cost, and date installed for all fuel cell projects completed since January 1, 1998. Such references may be checked for performance, quality of service and satisfaction of contract obligations.

3.3.4 CALIFORNIA PRESENCE (1 page)

- Indicate the address of your principal office
- Indicate the address of any California location(s), the scope of work conducted and the number of employees at that location
- Indicate the extent, if any, to which the fuel cell products you could offer under subsequent RFP's are or could be manufactured, assembled, packaged, and/or sold in California
- Include your application for EZA, LAMBRA, TACPA, or SBPCA preference, as applicable.

3.3.5 CONTRACT AND FINANCIAL CAPACITY (2 pages plus financial statements)

- Indicate in the attached Exhibit A the volume of fuel cell installations that you could complete for the Authority in 2002 through 2005
- Describe your bonding capacity and any relevant sureties or insurance companies
- Provide audited financial statements (or unaudited, if audited statements are not available) for your two most recent years of operations²

3.3.6 SYSTEM TECHNICAL DESCRIPTION (4 pages plus Exhibit B)

Respondents shall either (i) indicate that their systems will comply with all the requirements of Exhibit B of this RFB or (ii) list the items that would not comply and explain why. Respondents shall also complete Exhibit A. Note that the Authority retains discretion to reject proposals responding to subsequent RFP's if they contain values inferior to those provided in response to this RFB.

Please describe each fuel cell technology you plan to offer for commercial installation during the multi-year period covered by this RFP, and as to each model provide the following information:

- Type of fuel cell array (stacked, tubular, etc.)

² See Section 5.11 regarding confidentiality

- Materials composition of fuel cell array
 - Type and manufacturer of each major balance of plant component (reformer, inverter, blowers, control systems, etc.).
 - Nameplate electrical rating (net of any parasitic losses)
 - Recovered heat output (water temperature, steam temperature and pressure, flow rate)
 - On-site space and clearance requirements
 - Hazardous material information
 - Venting requirements
 - Foundation requirements
 - Electric only efficiency
 - Fuel capability
 - Fuel use
- Describe the annual operating and maintenance requirements and costs (including personnel, labor hours, supplies, equipment, etc.) of each fuel cell system you plan to offer.
 - Include expected periodic investments (such as stack replacements) required to keep the unit functioning to specifications for 20 years. (Refer to Exhibit A).
 - Indicate the expected economic life of the unit(s) and critical subcomponents.
 - Show typical and warranted degradation rates of stacks, tubular or other conversion configurations, which your systems have experienced in field installations. If empirical evidence is not available, please project the degradation rates for the useful life (up to 30 years) of the fuel cell systems you plan to offer.
 - Describe any other benefits your system provides that other systems could not provide, but only include benefits that can be readily measured and agreed to by independent analysis.
 - Describe any significant product enhancements that you expect to be available for installation in response to RFP's within the multi-year horizon of this RFB.

3.3.7 WARRANTY AND SERVICE CONTRACT (2 pages plus attachments)

- State whether you can comply with the minimum warranty requirements (or equivalent) set forth in this RFB, (Section 2.4).
- If you cannot comply with the minimum warranty requirements, indicate the areas of shortcoming including exceptions to scope and exclusions.
- Explain whether any other warranties from suppliers are available to the State and if so, indicate who provides the warranty and its key terms.
- If you have a standard warranty agreement, please provide a copy.
- If you require a service agreement during the warranty period as a condition of the warranty, please indicate its annual cost and provide a copy of the agreement.
- If you offer a standard extended (post-warranty) service agreement, please indicate its annual cost and provide a copy of the agreement.

3.3.8 TYPICAL PROJECT SCHEDULE AND TIMING (1 page)

For evaluation purposes, submit a schedule for a fuel cell installation indicating the expected milestones, each referenced to receipt of a Notice to Proceed. The following schedule items illustrate the kind of information sought, but respondents may substitute milestones that they customarily use in scheduling similar projects, or that they believe would be appropriate for projects requested by the Authority.

- Notice to Proceed Week 0
- Permit application materials, including design schematics
- Pre-construction meeting
- Preparation of site
- Delivery of skid-mounted system components
- Delivery of other balance of plant equipment
- Installation start date
- Completion date
- Testing of installation
- Turnkey delivery for operation
- Completion of punch list
- Delivery of two (2) sets of As-Built plans for each system and all operating manuals

4.0 EVALUATION PROCESS

Respondents will be evaluated by a panel of subject matter experts convened to assist the Authority in review of all RFB submittals and based on the overall qualifications of respondents and on whether they satisfy the RFB's minimum requirements. The Authority reserves the right, at its sole discretion, to accept a response that does not satisfy all requirements but which, in the Authority's sole judgment, sufficiently demonstrates the ability to produce, deliver, design, permit, and/or install a substantial volume of fuel cell projects and to satisfy the major requirements of this RFB. The Authority reserves the right to interview any or all respondents to this RFB or to ask for additional information or clarifications. The Authority expects to complete its evaluation process within two weeks of receiving the responses, although this schedule will depend on the number, length, completeness and complexity of responses received.

The Authority will establish the pre-qualified vendor bid list by reviewing and selecting those submittals that satisfactorily meet the requirements of this RFB. Any responses evaluated as falling into the last column, "unresponsive or does not meet standard" may be grounds for disqualification of the entire submittal (See Exhibit C for Chart).

5.0 GENERAL RULES

- 5.1 Clarifications.** A potential respondent may request clarification of any provision in this RFB. Unless the Authority deems such clarification to be trivial in nature, any such clarifying questions and the Authority's response thereto will be addressed as an Addendum to this RFB. In no event can oral representations be relied on by a vendor if such representation conflicts with this RFB, including any Addenda.

- 5.2 Addenda.** The Authority may modify any part of this RFB prior to the date indicated for submission of responses. Any addendum will be in writing and will be issued to all vendors who have received this RFB. Addenda will be consecutively numbered.
- 5.3 No Obligation/Cancellation and Re-issuance of RFB.** This RFB does not obligate the Authority to establish eligibility for any respondents, or to issue any subsequent RFP's or enter into any agreements. The Authority reserves the right to cancel or re-issue this RFB at any time, and to solicit qualifications through any appropriate method.
- 5.4 Rejection of Proposals.** The Authority may reject any submittal it deems to be incomplete, unresponsive, significantly inaccurate or not credible in its representations, or which is unacceptable to the Authority in the context of this RFB and the RFP's it expects to issue subsequently.
- 5.5 One Proposal Per Respondent.** A respondent may submit only one response to this RFB. However, a respondent may be a subcontractor to any number of other respondents that may submit responses to this RFB.
- 5.6 Substitutions.** Respondents may substitute or alter their proposals subsequent to the submission date only if the Authority approves such changes in writing.
- 5.7 Duration of Submittals.** The production and installation capacities and indicative prices submitted in responses to this RFP shall be deemed to continue in effect for the time periods indicated in the responses unless the Authority agrees in writing to a change.
- 5.8 Cost of Proposal and Non-Compensation.** Each respondent is solely responsible for all costs associated with responding to this RFB, and in no event will the Authority reimburse any such costs. The Authority reserves the right to make use of any information or ideas contained in the proposals without compensation to the vendor.
- 5.9 Delivery of Proposals.** Each vendor is solely responsible for assuring a timely submittal of its proposal. Late proposals will not be accepted unless the Authority, in its sole discretion, finds compelling reasons of equity to do so, and states those reasons in a signed writing waiving the submittal deadline for a respondent.
- 5.10 Withdrawal of Proposals.** Responses to this RFB may be withdrawn after submission by written request of the vendor's authorized representative prior to the date and time specified for proposal submissions. Proposals may be withdrawn and resubmitted in the same manner if done prior to the submission deadline.
- 5.11 Disposition of Proposals; Confidential Information.** All submittals and the information therein become the property of the Authority upon submittal. Confidential information shall be returned at the bidder's request and at the vendor's expense. The Authority will employ reasonable efforts to hold portions of the responses specifically identified and marked as "Confidential" in confidence to the extent permitted by law, until such time as final awards are made and contracts signed pursuant to subsequent RFP's contemplated by this RFB, at which time these responses will become public records, available for review by the public.
- 5.12 Endorsements and Press Releases.** If a respondent is placed on the eligibility list pursuant to this RFB, such respondent shall not issue any news releases or other statements pertaining to the award that state or imply the Authority's endorsement of its services or products without the Authority's written agreement.

5.13 “kW”. Unless the context clearly requires otherwise, the term ‘kW’ when used in this RFB, means kilowatts of AC capacity measured as output from the inverter.

5.14 Disputes.

- a) The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, contractor shall submit to the Executive Director or designee a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this contract, unless the State, on its own initiative, has already rendered such a final decision. Contractor’s written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the contract, contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the contract adjustment for which contractor believes the State is liable. If the contractor is not satisfied with the decision of the Executive Director or designee, the contractor may appeal the decision to the Board Chair. In the event that this contract is for information technology goods and/or services, the decision may be appealed to an Executive Committee of State and contractor personnel.
- b) Pending the final resolution of any dispute arising under, related to or involving this contract, contractor agrees to diligently proceed with the performance of this contract, including the delivery of goods or providing of services in accordance with the State’s instructions. Contractor’s failure to diligently proceed in accordance with the State’s instructions shall be considered a material breach of this contract.
- c) Any final decision of the State shall be expressly identified as such, shall be in writing, and shall be signed by the Executive Director or designee if an appeal was made. If the State fails to render a final decision within 90 days after receipt of contractor’s demand, it shall be deemed a final decision adverse to contractor’s contentions. The State’s final decision shall be conclusive and binding regarding the dispute unless contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

5.15 Disabled Veteran Business Enterprises

The state established a 3% Disabled Veteran Business Enterprise (DVBE) Participation Goal to ensure a portion of the state’s overall annual contract dollars are awarded to DVBEs. As a certified DVBE you are eligible for the state’s 3% DVBE Participation Program, and, DVBE certification status strengthens business networking opportunities via the state’s Internet Certified Firm Inquiry Services’ certified DVBE query and listing. DVBE does not apply to this RFB, but will be applicable to subsequent RFP; issued by the Authority. Documentation is provided here for informational purposes.

To be eligible for certification your business:

- Must be at least 51% owned by one or more disabled veterans;
- Your daily business operations must be managed and controlled by one or more disabled veterans (the disabled veteran(s) who manages and controls the business is not required to be the disabled veteran business owner(s)); and,
- Your home office must be located in the U.S. (the home office cannot be a branch or subsidiary of a foreign corporation, foreign firm, or other foreign based business).

For certification purposes, a "disabled veteran" is:

- A veteran of the U.S. military, naval, or air service;
- Has a service-connected disability of at least 10% or more; and
- Must be a California resident.

Access our online [Disabled Veteran Business Enterprise Certification Application](#) (STD. 812), or to receive your hard-copy form by mail, e-mail osbcrhelp@dgs.ca.gov or call (916) 323-5478.

5.16 Prevailing Wage

The vendor, and any subcontractor thereof, shall pay the rate of wages for regular, overtime and holiday work plus employer payments for all benefits generally prevailing in the locality in which the work is to be performed, as determined by the State of California, Department of Industrial Relations, for all crafts, classifications or types of workmen used on the ordering agency premises at the point of delivery by the vendor, or subcontractor, for the assembly and installation of the materials purchased under this agreement.

5.17 Special Conditions

For future site-specific RFP's, bidders will be required to comply with the Special Conditions – Public Works requirements (Contracting License, Subcontractor Listing, and Worker's Compensation) as described in Exhibit G.

EXHIBIT A
CAPACITY AND PRICE BIDS

Year ended September 30,	Capacity and Pricing			
	2002	2003	2004/2005	Total
<i>Installation capacity</i>				
Maximum aggregate capacity that could be installed (kW)				
Maximum number of projects that could be completed				
Of systems proposing, what percentage of your fuel cell systems manufactured will be in California				
Of systems proposing, what percentage of your fuel cell systems will be assembled in California				
<i>Price for a fuel cell system (specify kW output)</i>				
Design, engineering, permitting				
Skid-mounted equipment assembled & delivered to site, including sales tax				
Other equipment delivered to site				
Construction				
Installation				
Electrical interconnection				
On-site training				
Transaction & other costs				
Indicative turnkey price (sum of above)				
<i>Warranty</i>				
Number of years all-in (comprehensive) system warranty or equivalent provided (must be at least 5 years). In accordance with 2.4				
<i>Average long-term operating and maintenance costs</i>				
Routine maintenance yearly				
Stack Replacements (annualized cost ³)				
Other average annual costs ⁴				
<u>TOTAL(S)</u>				

³ Costs shall be annualized by assuming a replacement reserve account is established to pay for this item. Account must have positive and equal payments each year, and balance must be sufficient to cover expense in year incurred. Assume no inflation, no discounting.

⁴ This can include a sinking fund for periodic costs not included in the two items above. If so, please calculate as in the previous footnote. Please specify what this item covers.

EXHIBIT B

MINIMUM TECHNICAL AND INSTALLATION REQUIREMENTS

Site-specific technical requirements will be established at the time subsequent RFP's are issued for the installation of fuel cells at various State buildings or other appropriate sites. However, the conditions listed in this Exhibit B should be considered as generally applicable to all sites.

The general technical requirements are:

All fuel cells offered by vendors seeking eligibility to respond to future project-specific RFP's must meet the following minimum requirements:

- Electric output at 60 Hertz and 120/240 volts single-phase or 480 volts single- or 3-phase, and otherwise suitable for use in typical commercial applications.
- If operating on natural gas, capability of operation on natural gas delivered at pressures of 5 to 150 psi, including all equipment needed to process the gas for conversion to electricity by the fuel cell.
- Capability of operation as grid-connected, plants with switchgear configured such that operation will continue during grid outages.
- Compliance with all applicable distributed generation emissions certification standards adopted by the California Air Resources Board and local air pollution control districts.
- All systems must be installed in accordance with all applicable requirements of local electrical codes and the National Electrical Code (NEC). Systems must be designed and installed using UL or ETL listed components.
- A description of compliance with applicable codes, including:
 - ANSI Z21.83 (fuel cell performance and safety)
 - NFPA 853 (fuel cells near buildings)
 - NFPA 70 (electrical components)
 - UL 1741 (inverters and controllers)

The Contractor will be responsible for obtaining all necessary permits for the facilities.

The Contractor will provide meters and meter housings for each system. The State will be providing a Data Acquisition System (DAS) at the sites. Respondents will be required to demonstrate that the installed system meets the output performance standards.

EXHIBIT C
COMPLIANCE WITH RFB SUBMITTAL REQUIREMENTS

Requirement of RFB		Response significantly exceeded standard	Response satisfied standard	Unresponsive or response does not meet standard
	Signed transmittal letter indicating acceptance of RFB terms and conditions			
Team and qualifications				
	Submitted all data in Section 3.3.1			
Track record and experience				
	Minimum experience Section 2.1			
	Submitted all data in Section 3.3.2			
	Submitted all data in Section 3.3.3			
Contract and financial capacity				
	Meets standard in Section 2.2			
	Submitted all data in Sections 3.3.5			
	Completed all of Exhibit A			
Technical and installation				
	Meets standards in Section 2.3			
	Indicated compliance with Exhibit B			
	Submitted all data in Section 3.3.6			
Warranty and service contract				
	Indicated compliance with Section 2.4			
	Submitted all data in Section 3.3.7			
Milestones and schedule				
	Submitted schedule per Section 3.3.8			
California Presence				
	If applicable, data per sections 2.6 & 3.3.9			

EXHIBIT D

ENTERPRISE ZONE ACT (EZA)

Government Code Section 7070, et. seq., provides that California based bidders, shall be granted a 5% preference, not to exceed a maximum of \$50,000, whenever a state agency prepares a solicitation:

- a. For a goods contract in excess of \$100,000 and the worksite(s) is not fixed by the terms of the contract, if they demonstrate and certify, under penalty of perjury, that 50 percent of the labor hours required to manufacture the goods and perform the contract shall be accomplished at an approved worksite(s) located in an enterprise zone (Gov. Code 7084(a)).
- b. For a services contract in excess of \$100,000, and the worksite(s) is not fixed by the terms of the contract, if they demonstrate and certify, under penalty of perjury, that 90 percent of the labor hours required to perform the contract shall be accomplished at an approved worksite(s) located in an enterprise zone (Gov. Code 7084(b)).
- c. Where a bidder complies with Gov. Code Sections 7084(a), or 7084(b), and certifies, under penalty of perjury, to hire a specified percentage of persons living within a targeted employment area, or are enterprise zone eligible employees, those bidders shall be granted additional preferences according to the hiring percentages specified as follows:
 1. An additional one percent (1%) preference by certifying to hire employees equal to 5 to 9 percent of the workforce
 2. An additional two percent (2%) preference by certifying to hire employees equal to 10 to 14 percent of the workforce
 3. An additional three (3%) preference by certifying to hire employees equal to 15 to 19 percent of the workforce
 4. An additional four (4%) preference by certifying to hire employees equal to 20 or more percent of the workforce
- d. The maximum that can be awarded for this and any other provision of law is limited to 15 percent, nor shall the combination of all preferences allowable by law exceed one hundred thousand (\$100,000) dollars.

Bidders seeking to obtain an EZA 5 % preference must submit a completed STD Form 831 with or prior to their bid that includes the following:

1. All appropriate certifications.
2. The bidding firm's name and the name of all suppliers and subcontractors that will work with the bidder to fulfill the terms of the contract along with the address(es) of each of the worksite(s) and estimated labor hours.
3. Enterprise zone name(s)
4. Bidder's original signature.
5. The bidder must indicate if seeking the additional 1 to 4 percent preference available for hiring persons with a high risk of unemployment, by checking the appropriate box.

A bidder who has claimed an EZA preference(s) and is awarded the contract will be obligated to perform in accordance with preference(s) requested, provided that the EZA preference(s) was granted in obtaining the contract.

Bidders should contact the city or county economic development office or the State Trade and Commerce Agency at (916) 324-8211 to identify enterprise zone locations. Firms receiving EZA preferences must report their labor hours. Reference the state contract on which the award is based for specific reporting requirements.

Shortcut to EZA Request Form Std. 831: <http://www.osp.dgs.ca.gov/pdf/std831.pdf>

EXHIBIT E

LOCAL AGENCY MILITARY BASE RECOVERY AREA (LAMBRA) ACT

Government Code Section 7118, et. seq., provides that whenever a state agency prepares a solicitation for a goods or services contract in excess of \$100,000 and the worksite(s) is not fixed by the terms of the contract, a 5 percent bid preference will be granted to California-based bidders if they certify under penalty of perjury that no less than 50 percent of the labor required to perform a contract for goods, or 100 percent of the labor hours required to perform a contract for services are performed at an approved worksite(s) located in a local agency military base recovery area.

Bidders seeking to obtain a LAMBRA 5 percent preference must submit a completed STD Form 832 with or prior to their bid that includes the following:

1. All appropriate certifications.
2. The bidding firm's name and the name of all suppliers and subcontractors that will work with the bidder to fulfill the terms of the contract along with the address(es) of each of the worksite(s) and estimated labor hours.
3. Military Base Recovery Area name(s).
4. Bidder's original signature.
5. The bidder must indicate if seeking the additional 1 to 4 percent preference available for hiring persons with a high risk of unemployment, by checking the appropriate box.

A bidder who has claimed a LAMBRA preference(s) and is awarded the contract will be obligated to perform in accordance with preference(s) requested, provided that the LAMBRA preference(s) was granted in obtaining the contract.

Bidders should contact the State Trade and Commerce Agency at (916) 324-8211 to identify LAMBRA zone locations. Firms receiving LAMBRA preferences must report their labor hours. Reference the state contract on which the award is based for specific reporting requirements.

Shortcut to LAMBRA Request Form Std. 832: <http://www.osp.dgs.ca.gov/pdf/std832.pdf>

EXHIBIT F

TARGET AREA CONTRACT PREFERENCE ACT (TACPA)

Government Code Section 4530, et. seq., provides that California based companies shall be granted a 5% preference, not to exceed a maximum of \$50,000, whenever a state agency prepares a solicitation:

- a. For a goods contract in excess of \$100,000 and the worksite(s) is not fixed by the terms of the contract if they demonstrate and certify under penalty of perjury that at least 50 percent of the total hours required to manufacture the goods and perform the contract shall be performed at an identified worksite(s) located in a distressed area.
- b. For a services contract in excess of \$100,000 and the worksite(s) is not fixed by the terms of the contract demonstrate and certify under penalty of perjury that at least 90 percent of the total labor hours required to perform the contract shall be performed at an identified worksite(s) located in a distressed area

Bidders seeking to obtain a TACPA 5 percent preference must submit a completed STD Form 830 with or prior to their bid that includes the following:

1. All appropriate certifications.
2. The bidding firm's name and the name of all suppliers and subcontractors that will work with the bidder to fulfill the terms of the contract along with the address(es) of each of the worksite(s) and estimated labor hours.
3. County census tract number and block group number.
4. Bidder's original signature.
5. The bidder must indicate if seeking the additional 1 to 4 percent preference available for hiring persons with a high risk of unemployment, by checking the appropriate box.

A bidder who has claimed a TACPA preference(s) and is awarded the contract will be obligated to perform in accordance with the preference(s) requested, provided that the TACPA preference(s) was granted in obtaining the contract.

Bidders should contact the Office of Small Business Certification and Resources at (916) 323-5478, to determine if the worksite(s) is eligible. Firms receiving TACPA preferences must report their labor hours. Reference the state contract on which the award is based for specific reporting requirements.

Shortcut to TACPA Request Form Std 830: <http://www.osp.dgs.ca.gov/pdf/std830.pdf>

EXHIBIT G
PUBLIC WORKS DOCUMENT PACKAGE

Preliminary

This solicitation is for equipment that must be installed at the Agency's site by the successful bidder. In accordance with the California Contractor's License Law, in order for a bid to be considered responsive, the bidder must possess a valid contractors license, of the proper classification, at the time of bid opening . (Business and Professions Code, B&P 7028.15)

Statement of Work

License Requirements

The following license(s) is required for this solicitation:

Classification

Contracting law states that a prime contract cannot be awarded to a specialty contractor whose classification constitutes less than a majority of the project. B&P 7059(b) However, required work that is incidental and supplemental to the project may be undertaken by the specialty contractor even though that contractor does not hold those specific specialty licenses. All other work must be performed by a licensed subcontractor in accordance with the Public Contract Code Section 4100, et.seq.

Incidental and supplemental is defined as work essential to accomplish the work in which the contractor is classified. A specialty contractor may use subcontractors to complete the incidental and supplemental work, or he may use his own employees to do so. (California Code of Regulations CCR 831)

Bidder's Contractors License Number _____

License Issued to Whom? _____

Relationship of Bidder to License Holder _____

Classification _____

Expiration date _____

The bidder, by their signature on the Invitation for Bid, certifies under penalty of perjury the accuracy of the representations made on the bid form with regard to the contractor's license number(s), class, status in good standing and the expiration date.

***Subcontractors**

Name/Address _____
License No. _____
Classification _____
Expiration date _____

Name/Address _____
License No. _____
Classification _____
Expiration date _____

Name/Address _____
License No. _____
Classification _____
Expiration date _____

Name/Address _____
License No. _____
Classification _____
Expiration date _____

*Attach further detail for additional entries.

Other Requirements

The bidder shall comply with the Laws and Regulations governing the payment of prevailing wage as identified in the Labor Code, Part 7 (Public Works and Public Agencies), Chapter 1 (Public Works). Copies of the prevailing rate of per diem wages are on file at the Procurement Division headquarters and shall be made available to any interested party on request.

Before starting installation, the contractor must obtain and provide to the Procurement Division a payment bond on Standard Form 807. The bond shall be 100% of the total amount of the contract price for equipment and labor.

The state reserves the right to approve subcontractors.

Workman's Compensation Certification

By signing and submitting a bid, the bidder certifies that they are aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workman's compensation or to undertake self-insurance in accordance with the provisions of that Code, and will comply with such provisions before commencing the performance of the work of this contract.